

PD-0712-18

MAURICE LAMAR PIPER

V.

THE STATE OF TEXAS

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IN THE TEXAS

COURT OF

CRIMINAL APPEALS

FILED  
COURT OF CRIMINAL APPEALS  
9/18/2019  
DEANA WILLIAMSON, CLERK

**MOTION FOR REHEARING**

Before the Fifth Court of Appeals, Maurice Piper explained that this is the rare case in which the record on direct appeal shows that trial counsel provided ineffective assistance. For while counsel advanced a voluntary-conduct defense at Piper’s murder trial, he did not request the corresponding jury instruction; instead, counsel invited the court to include in the charge the lesser-included offense of manslaughter. *See* Br. at 9-10.

In its opinion affirming the trial court’s judgment, the court of appeals mistook or mischaracterized the issue as one easier to dispose: whether counsel was ineffective in failing to advance a voluntary-conduct *defense*. *Piper v. State*, 05-16-01321-CR, 2018 WL 3014578, at \*2 (Tex. App.—Dallas June 15, 2018, no pet. h.) (“Counsel is under no duty to raise every defense available....”). Because that’s not what happened—counsel advanced a voluntary-conduct defense—Piper

petitioned this Court for its review. *See* PDR at 8-9. And this Court granted its review. And in its September 11, 2019, opinion, this Court recognized that “[i]n closing argument the defense attorney told the jury that Appellant was credible,” “maintain[ing] that Appellant was not guilty of murder and was at worst guilty of acting recklessly.” Opinion at 3. Yet this Court had no trouble imagining an explanation for the divergence between defense and charge: “Given the weakness of the evidence supporting an involuntary conduct theory,” this Court reasoned, counsel “might have reckoned that Appellant’s only realistic chance of avoiding a prison sentence depended on a conviction of a lesser offense and chosen not to object to the jury charge for that reason.” *See* Opinion at 6-7.

If that might have been what happened, then yes, this is not the rare case in which the record on direct appeal shows that trial counsel provided ineffective assistance. But we can be certain that it’s not what happened. And for a very simple reason: counsel’s closing argument came after the charge conference. RR5: 108-09, 115. *After* this Court imagines counsel abandoning a voluntary-conduct defense, there he is,

urging the jury that Piper's testimony, explaining that he involuntarily pulled the trigger, was credible:

Now what establishes credibility? Credibility can be established when you hear somebody you believe them. What gave you an initiative to believe someone? They don't make themselves out to be perfect. [...] Only it was Maurice who came and laid it out for you in a logical concise manner. He told you what he did that was right, but you can really tell that Maurice is being honest with you because he told you what he did wrong. He told you what he's not proud of, and he told you how he hates that this happened.

Yeah, could he have said a bunch of statements about Hardy Wilson to perhaps save his skin? Well, he didn't. Why? Why do you think Maurice Piper didn't make those statements? Folks, it's because he's telling you the truth. And if he's going to unlike the State's bag of witnesses, obviously they wanted to get you with—they figure, well, maybe if we bring you more that's better. We brought you a good honest witness.

RR5: 118-19.

But if we look at the totality of what you've been presented by the State, you cannot really figure out what occurred out there. It is only through Maurice Piper's testimony are you provided a clear insight to what occurred.

RR5: 120.

[W]ho gave you the most accurate and detailed description of what occurred? Maurice. Maurice got up there, he told you his arm was pulled, he told you the gun went off.

Did he make some fanciful statement like the pull weight or anything? She asked him about the trigger pull weight. He said, "Honestly, I don't know about those things." And he

doesn't know about those things. He just answered honestly. I'm sure they're going to try to paint him to be deceitful [sic] for just—for saying he didn't know.

.... he's the only one who's shown in this whole situation any remorse or any honesty or any integrity.

RR5: 122-123.

But what you did hear from Maurice is, he had no intention of using that weapon, none. He wanted to meet Hardy over there. You heard from many witnesses that Hardy advanced at that time. And then you heard—you heard testimony that at that time Dominique grabbed Maurice and the gun went off.

Folks, it is consistent, it is logical.

RR5: 124.

Piper's counsel's preceding failure to request a voluntary-conduct instruction thus cannot be explained as counsel's recognition of the defense's futility. So the question thus remains—Is there any imaginable strategic reason to advance a defense but not request the corresponding jury instruction?—and Piper moves this Court to rehear this case.

Respectfully submitted,

/s/ Bruce Anton

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I hereby certify that, concurrent with this document's electronic filing, it was electronically served to Dallas County Assistant District Attorney Marisa Elmore at @marisa.elmore@dallascounty.org and the State Prosecuting Attorney.

/s/ Bruce Anton  
Bruce Anton

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/s/ Bruce Anton  
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